IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1945

NO.....

UNITED STATES EX REL. WILLIAM A. DOSS,
Petitioner,

vs.

E. E. LINDSLEY, SHERIFF, PIATT COUNTY, ILLINOIS,
Respondent.

BRIEF AND ARGUMENT IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI; REASONS RELIED ON FOR ALLOWANCE OF WRIT.

Specification 1.

This is an error of fact, and it would be superfluous to attempt an argument in its support. It is a little astonishing when it is noted that the petitioner has stood on this proposition from the beginning of this litigation and never swerved from it in any court. The strangest circumstance of all, however, is that no court seems willing to take the trouble to even discuss the fundamental question of this case involving any question concerning petitioner's rights, under any provisions of the laws of these United States.

Specification 2.

In *People v. Zimmerman* (1928), 278 U. S. 63, Bryant

was held under a statute which he asserted violated his rights under the Fourteenth Amendment, and sought a writ of habeas corpus. In that case this Court carefully examined his contention. Here this petitioner contends, and has in all courts contended, that he is held under a judgment pursuant to a statute he asserts violates his rights under the Fourteenth Amendment of the United States Constitution. But he cannot persuade any court in Illinois, nor could he persuade the lower Federal Courts, to examine seriously these questions he raises. It is respectfully submitted that it is an error which this Court should correct, in effect, to refuse a man convicted of a crime a hearing upon the very essence of his defense. That comes dangerously close alone to being just a plain denial of "due process of law" and justice in this case. As to the merits of this argument, he will present them under specification No. 3, post.

Specification 3.

Petitioner thinks that Section 402, Chapter 38, Smith-Hurd Ann. Stat., under which this petitioner was found guilty of criminal libel and sentenced to six months in jail, as applied to the undisputed facts (stated in Count I of the indictment) and interpreted by all of the Courts of Illinois, is an unconstitutional restriction upon the right of free speech and a free press and that, therefore, the judgment against this petitioner is void and should be so pronounced. The said Illinois Statute is set forth below:

> "A libel is a malicious defamation, expressed either by printing, or by signs or pictures, or the like, tending to blacken the memory of one who is dead, or to impeach the honesty, integrity, virtue or reputation or publish the natural defects of

one who is alive, and thereby to expose him to public hatred, contempt, ridicule, or financial injury."

The charging part of the indictment, Count I, on which the petitioner was found guilty and referred to herein, reads as follows:—

"Carl Glasgow (meaning Carl I. Glasgow) is not a fair and impartial prosecutor—no sir, (1) in the Muse case I say he (meaning Carl I. Glasgow) is either a persecutor, or an unfair prosecutor, (2) in the Ard case, or should be case, he (meaning Carl I. Glasgow) wrongfully shields that man; (3) (a) in the recent Bell criminal case he (meaning Carl I. Glasgow) wrongfully fails to prosecute; (b) and that was my truck more than Bell's for which we got out the complaint, I wrote it; he (meaning Carl I. Glasgow) wrongfully uses and bargains the dismissal of that Criminal case, totally ignores my rights as a citizen, to get the sheriff his (meaning Carl I. Glasgow) client out of a bad civil damage suit;! (4) He (meaning Carl I. Glasgow) basely and wrongfully threatened and asserted falsely to Dwight Doss, as a fact that father Muse would be indicted for bribery in that bastardy case! unless (?) or if (?) somebody (?) did not?? What did he (meaning Carl I. Glasgow) mean? He (meaning Carl I. Glasgow) failed on this threat! Why did he (meaning Carl I. Glasgow) make it?

"Yes, in my judgment Carl Glasgow (meaning Carl I. Glasgow) would have a hard time, a very hard time indeed,—to save his State's Attorney commission in not being taken from him (meaning Carl I. Glasgow), if he (meaning Carl I. Glasgow) were prosecuted for these and various acts of malfeasance in office (meaning thereby to

charge that the said Carl I. Glasgow had been guilty of conduct unbecoming a member of the legal profession to such an extent that his license to practice law could be taken from him by the Supreme Court of the State of Illinois) but he (meaning Carl I. Glasgow) need not worry, I'll give him (meaning Carl I. Glasgow) no such direct trouble—I'll do mine locally and all in the open,—and right thru 'Liberty' so if I am wrong on my facts or actions, I am liable for damages and ready to go to jail, but I think the public is honest and fair, and it will stand by me now, it begins to see things!; I know I have tackled a gigantic machine, 'tis a big one, it goes all over Piatt County and even over into other counties for their help,—but I'm watching these angles too!"

The language is strong, yes, but not nearly so violent as language used in the press and from the platform about the President of the United States in some recent and current periods in our history, and hundreds of public officers throughout the United States. Moreover, the strongest statement, in effect being, that the State's Attorney was a liar and a cheat, *the jury found to be true*, and, surely the publication thereof was thusly justified in all respects, morally as well as legally.

This is important! It is to be noted that if the statements in Count I were *not true*—the officer (Carl I. Glasgow) had at all times the protection of the civil laws against defamation of character, *which he did not and has not invoked.* This is a material fact in the opinion of the Court in the Case of *West Virginia State Board of Education v. Barnette*, 319 U. S. 624, ..39, 641; it says the freedom of speech and of the press are not to be restricted in order to protect the civil rights "susceptible to redress by other means."

It is to be noted also that the charge under the second Count (App. C), *charged and proved*, was that State's Attorney Carl I. Glasgow "was a liar and a cheat",—and so if spoken of a lawyer in certain circumstances certainly constitutes ample sufficient grounds for disbarment. The petitioner's deductions on the subject of the "Commission" of the State's Attorney find ample justification also in the verdict of "not guilty" of the jury. How could the jury divide the same evidence as it did? Can one lawfully be both "guilty" and "not guilty" upon the same "bundle" of evidence? Petitioner says not in America, in circumstances like the charges are related together in these two Counts.

A close analysis of Count I of the indictment, on which the judgment of the court alone rests, shows its flimsy character as a legal *reason* for curtailing the freedom of the press. The first paragraph is probably the most important. The second paragraph seems serious upon its face, but really is a particularization with respect to the charge set forth in Count II, namely, that the State's Attorney was a "liar and a cheat," with warranted deductions from those "facts." Obviously, if this statement be true, the suggestion in the second paragraph of Count I would not be far fetched—would certainly be a deduction justifiable under the Constitutional guaranties of free expression as not amounting to a "great and present danger" to any paramount public interest in behalf of which this Constitutional right only may be curtailed. Per contra, if such a statement be true of a public official it is in the public interest that it be *known* and as *generally* as *possible*. It is to the interest of the "liar and cheat" in the public service that the *cloak* of *secrecy* shall continue to continue to *conceal* his wrongs and errors from the public view.

The first paragraph of Count I therefore contains the

words on which the State rests its claim of power to restrict the freedom of the press and punish the citizen criminally for an abuse of this Federal Constitutional right. Here the petitioner charges that the State's Attorney is "either a persecutor, or an unfair prosecutor"; and that he "is not a fair and impartial prosecutor." Then follows numerous alleged cases which are given in supporting the charge.

It is respectfully submitted that there are very few prosecutors in the United States who have not frequently been called "unfair", or "persecutors", or "partial". No prosecutor is usually impartial, and the constitution and the general law of the United States, and of every state and territory in the Union, presume that prosecutors are or are not likely to be impartial. That is why the law at public expense appoints free counsel for impecunious defendants; everybody knows that the prosecutor usually is a biased and partial person, it is but human nature to be so, and will not usually fairly protect the defendant whom he prosecutes. *Johnson v. Zerbst*, 304 U. S. 458, 463. To say that a prosecutor is unfair, or not impartial, or even that he is a persecutor, is to give expression in common every day street parlance to a fact which underlies some of the fundamentals of our Constitution and American way of life—freedom to express opinions, and our criminal law and its procedure should recognize all of that. To jail a man or a publisher for such a statement would be branded an outrage if it happened in a totalitarian country instead of our own!

Petitioner charged, according to the indictment, that the State's Attorney "wrongfully shields a man", giving the name. Is not this a common-place accusation against a prosecutor who pursues some, but not all, offenders?

He "failed to prosecute", but who has not heard that charge a thousand times? He "bargains the dismissal of a criminal case;" but it is a matter of universal knowledge also that prosecutors bargain for pleas of guilty and agree not to prosecute other charges, as a part of the bargain? Nothing in this record shows that this was not just one of such cases, which in the practical administration of the criminal law, public officers do not—for a good or perhaps not for a good reason—chose to prosecute. Again, petitioner is charged with saying that the State's Attorney had threatened to prosecute and not done so! What trivialities here are called up to throttle free speech and a free press in Illinois, is not only unbelievable, it is dumfounding that such could be carried on as far as it has been here allowed in America!

There it is. No charge is here made which is not commonplace in relation to public prosecutors throughout the country. It is respectfully urged that because of the commonplace character of these charges, no "paramount public interest" was put in such "great and present danger" as to justify the imprisonment of this petitioner and a restriction upon the right of freedom of expression, by the law of the land; that Illinois does not have all the law that a citizen of these United States is permitted to live under and be protected by!

First: The rights of free speech and of a free press may not be restricted in order "to protect private rights susceptible of redress by other means". This Court has said long ago (and forcibly repeated recently) that,

> "freedom of speech and of the press, of assembly and of worship may not be infringed on such slender grounds. (Right of the state to impose restrictions on a public utility). They are susceptible of restriction only to prevent grave and immediate danger to interests which the state may law-

fully protect * * * They may not be restricted in order to protect private rights *susceptible to redress by other means.*" (Emphasis supplied).

West Virginia State Board of Education v. Barnette, 319 U. S. 624, 639, 641.

In *re W. A. Doss*, 367 Ill. 570, we have an illustration of the failure of that court to grasp the fundamental rights of individuals under the First and Fourteenth Amendments. The Court has said:

"The publication of newspaper articles, regardless of when they appeared * * * (is) especially to be condemned. (P. 573) * * * The fifth complaint charged respondent with the preparation and the publication of numerous newspaper articles which, although appearing after the trial of the case involved, criticized the court and the prosecuting officers in intemperate language."

Contrast that with what this Court said in *Bridges v. State of California*, 314 U. S. 252 (1941), among other things, it was stated:

"Such criticism after final disposition of the proceedings would clearly have been privileged (P. 272) * * * The assumption that respect for the judiciary can be won by shielding judges from public criticism wrongly appraises the character of American public opinion," and

we urge that these other recent cases of this Court clearly reaffirm those pronouncements of the law of our land!

The civil remedies of Illinois governing defamation of character were all open to Carl I. Glasgow, State's Attorney of Piatt County, but he did not resort to them. Instead, he invokes a penal statute which can be sustained only on the theory that it serves a *public interest* which is

paramount to the right of *free speech* and a *free press*. The record is deathly silent on all such even *allegations* in the count, and void of all evidence, even if had been charged.

Second: It is now also settled that there must appear "clear and present danger" in order to justify "restrictions upon expression where the substantive evil sought to be prevented by the restrictions is destruction of life or property, or invasion of the right of privacy." *Bridges v. State of California*, 314 U. S. 252, 262. This Court there said that the criteria "applicable under the Constitution to other types of utterances" are applicable "in contempt proceedings to out-of-court publications pertaining to a pending case", 314 U. S. at page 268,—and these recent cases of this Court I have cited repeatedly herein, merely shows this Court is sustaining its holdings back there in 1941 in that Bridges case! Why *will* our Supreme Court of Illinois not obey that law?

Specification 4.

The lower federal courts before relied on *Ex parte Hawk*, 321 U. S. 114. This case does not hold, nor does any other, that it is impossible for a party to exhaust all his remedies in the State Courts without resort specifically and eo nomine to habeas corpus. The underlying reason for the rule in the federal courts is the historic reluctance of these courts to take from the custody of the State a person who is held by state authority, until the courts of the state have had a full opportunity to pass upon the identical legal question which the petitioner raises in the federal courts. In the light of the reason for, and, therefore, the rule, the petitioner, now a suppliant at the bar of this Court, has accorded the State Courts of Illinois full opportunity to pass on the question he now urges here, and

each time the courts of Illinois have either ignored the question, or resolved it against him.

The Hawk case is not controlling because its facts are essentially different from the facts here; but in the statement of the general doctrine, it is controlling in favor of this petitioner, in this, that while it requires, as a prerequisite, that the petitioner exhaust "all state remedies available", it does not hold that this rule cannot be complied with without resort to habeas corpus. Put differently, the meaning of the rule is that every appropriate State remedy which, in the circumstances of each case, suggests the possibility that the State court may grant relief, must be invoked before coming to the federal courts; it does not, on the other hand, mean that every conceivable procedural remedy, always including habeas corpus, must be resorted to by the petitioner after all the available State tribunals have refused him relief in some suitable and proper State proceeding upon the very facts which in a habeas corpus or any other proceeding would be before such courts. Why stop with habeas corpus? Why not require the aggrieved convict to resort to coram nobis? Or coram vobis? Or some or all of the numerous motions increasingly available in various jurisdictions to test the correctness of legal procedure? Is it not plain that if the test is some formal procedure rather than the actual result in substance, our whole system of justice become absurd?

> In the Hawk case the Court said that the
> "petitioner's present contentions have been presented to the state courts only in an application for habeas corpus filed in the Nebraska Supreme Court, which is denied without opinion. From other opinions of that court it appears that it does not usually entertain original petitions for habeas

corpus, but remits the petitioner to an application to the appropriate district court of the state, from whose decision an appeal lies to the State Supreme Court."

(P. 116) The Court continues in the Hawk Case:

"Of this remedy in the State Supreme Court petitioner has not availed himself. Moreover, Nebraska recognizes and employs the common law writ of coram nobis which, in circumstances in which habeas corpus will not lie, may be issued by the trial court as a remedy for infringement of the constitutional right of the defendant in the course of the trial."
(P. 116)

In *Mooney v. Holohan*, 294 U. S. 103, 55 S. Ct. 340, the Court reiterated the doctrine thus, without any requirement that habeas corpus must in all cases be resorted to as a preliminary:

"Orderly procedure, governed by principles we have repeatedly announced, requires that before this Court is asked to issue a writ of habeas corpus * * * recourse should be had to whatever judicial remedy offered by the State may still remain open."

It cannot reasonably be said that petitioner's remedy "may still remain open" when the courts have passed upon identical fact situations in a proceeding *differing only in name*. This is exactly what is now done here. Petitioner has exhausted all State remedies and then applies to this Court direct for a writ of certiorari.

And it does

"appear that the question presented here has been considered on the merits by the Supreme Court (of Illinois) in a prior proceeding."
Ex parte Williams, 217 U. S. 604, 63 S. Ct. 431.

Specification 5.

This has been dealt with under the foregoing assignment of error and will not, at this time, be further elaborated, excepting to say that it has become hornbook law that the decisions of the state tribunals interpreting the statutes of the State are not binding or conclusive upon the federal courts when it is asserted by persons or corporations that rights secured them by the Federal Constitution are abridged, or violated by the interpretations challenged.

The adjudication of the Circuit Court of Piatt County, the finding of the petitioner guilty under the facts and circumstances detailed in this record, as this petitioner has contended and now contends, is a direct violation of the right of free speech and of free press, guaranteed him by the federal Constitution.

> "But, as has been held, very often, the question whether a State law or a tax imposed thereunder deprives a party of rights secured by the Federal Constitution, depends not upon the form of the Act, nor upon how it is construed or characterized by the State Court, but upon its practical operation and effect."

American Manufacturing Co. v. City of St. Louis (1918), 250 U. S. 459, 462, 39 S. Ct. 522; *Howard v. Fleming*, 191 U. S. 126, 23 S. Ct. 49.

CONCLUSION

Petitioner, however, does make, in good faith, formal and sincere application hereby and herein, that this Honorable Court take note of the fact that no Court in Illinois, or any Judge thereof, will, as he views it and charges the fact and law to be, do its or his duty under those Federal

Constitutional obligations, in accordance with and in obedience to their sworn duties to do, and fix and allow bail bond unto petitioner pending any of these proceedings herein mentioned; adding that petitioner stands ready, able and willing to give bond with approved securities in any reasonable sum that this Honorable Court may fix, or direct some other proper person or Court to fix and allow; he reminds this Court again that his sentence is but upon a misdemeanor, yet, it is for six months, and he has been serving thereon since June 16th. last, thus making his prison time only half up this September 16th, so, if he be accorded bail bond promptly, it can still be of substantial help to the petitioner, if, in the end, he should be absolved from all further requirements to further serve under it.

The utter injustice of denying bail bond in every case lies in the fact that if the prisoner later is ordered released, who will requite unto him the time he has served in prison and his financial damages?

Petitioner states that he is and will cause due notice of the filing of this petition in this Court to be duly served upon the respondent, E. E. Lindsley, Sheriff of said County, and Carl I. Glasgow, as State's Attorney of said County, and, in said notice especially direct their attention to the fact that petitioner herein is making said application for an order of allowance of bail bond, etc., and will cause proof of such service thereof to be thereafter duly filed with the Clerk of this Court.

THEREFORE, THE PREMISES CONSIDERED, Petitioner prays,

(a) That this Honorable Court will, without unnecessary delay, enter an order admitting petitioner to bail up-

on filing approved bail bond in such an amount, with approved security, and conditioned as shall be provided, pending the final determination of the hearing upon the petition herein;

(b) That this Court will cause its writ of certiorari to be issued and directed to and against the said Circuit Court of Piatt County, Illinois, to review its said order and judgment in the premises as herein complained of, etc., as, among other things, it entered on the 24th. day of August, A. D. 1945, in striking from its files the said petition for habeas corpus, and in denying the allowance of bail bond unto petitioner pending these proceedings before this Court;

(c) That upon final hearing to reverse the said judgments and orders of the said Circuit Court of Piatt County, and order the release and discharge of this petitioner forever from all further serving of any sentence under its said order and judgment, and directing it to so cause the same to be entered upon its records in accordance therewith, etc., and all at the costs of respondent, E. E. Lindsley, as Sheriff of said Piatt County, Illinois.

All of which is respectfully submitted.

WILLIAM A. DOSS,
Petitioner—Pro Se.

STATE OF ILLINOIS)
COUNTY OF PIATT) ss.

William A. Doss, petitioner, pro se, in the above entitled cause, being first duly sworn upon his oath, deposes and says that he has read the foregoing petition for writ of certiorari, knows the contents thereof, and says that the

matters and things therein contained are true and correct.

And further affiant saith not.

WILLIAM A. DOSS,

Subscribed and sworn to by William A. Doss, petitioner, pro se, in the above entitled cause, before me, Lula Perry, a Notary Public in and for said County and State, this 18th day of September, A. D. 1945. ffl

LULA PERRY,

(SEAL *Notary Public.*

My Commission Expires: April 14, 1946.